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1	Leo M. LaRocca, Esq. (SBN 115014)									
2	NIVEN & SMITH 425 California Street, 15th Floor									
3	San Francisco, CA 94104-2118 Telephone: 415.981.5451									
4	Facsimile: 415.433.5439 Attorneys for Plaintiff CALIFORNIA PACIFIC BANK									
5										
6	THE UNITED STATES DISTRICT COURT									
7	FOR THE NORTHERN DISTRICT OF CALIFORNIA									
8	SAN FRANCISCO DIVISION									
9	CALIFORNIA PACIFIC BANK,	Docket No. C07-03330 JCS								
10	a California banking corporation,	AFFIDAVITS OF ALAN CHI, MICHAEL WANG								
11	Plaintiff, vs.	AND MINH NGUYEN IN OPPOSITION TO BANK OF AMERICA'S MOTION TO DISMISS								
12	BANK OF AMERICA, N.A.,									
13	and DOES 1-20, inclusive.									
14	Defendants.									
15	Attached hereto as Exhibit "A" is the A	ffidavit of Alan Chi in Opposition to Motion to Dismiss.								
16										
1 <i>7</i>		of Michael Wang in Opposition to Motion to Dismiss.								
	Attached hereto as Exhibit "C" is the Affidavit of	Minh Nguyen in Opposition to Motion to Dismiss.								
18										

Dated: August 31, 2007 NIVEN & SMITH

By: Leo M. LaRocca /s/

LEO M. LaROCCA

Attorneys for Plaintiff CALIFORNIA PACIFIC BANK, a California banking corporation

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA SAN FRANCISCO DIVISION

CA	LIF	ORN	JΙΑ	PA	CIFIC	BANK,
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Plaintiff

CASE NO. C07-03330 JCS

BANK OF AMERICA, et al.,

Defendants.

DECLARATION OF ALAN CHI

I, ALAN CHI, declare as follows:

- 1. I have personal knowledge of the facts stated herein. If called to testify as a witness in this action, I could and would competently testify thereto.
- 2. I am a Vice President of California Pacific Bank and have been employed by California Pacific Bank since 2005.
- 3. California Pacific Bank is a California banking corporation incorporated on October 16, 1996. California Pacific Bank has maintained it its principal place of business in San Francisco, California since it was incorporated. California Pacific Bank currently has offices located in Walnut Creek, California and Fremont, California. At one time, California Pacific Bank also had an office in Sacramento, California. California Pacific Bank has never operated any office or branch in the State of Florida. All of California Pacific Bank "accounts" as such terms is defined in the Currency and Foreign Transactions Reporting Act, 31 USC Sections 5311-5330 and

12 USC Sections 1818(s), 1829(b) and 1951-1959 (commonly known as the Bank Secrecy Act) are held and maintained at either of the three California offices of California Pacific Bank.

- California Pacific Bank has never advertised in the State of Florida. California 4. Pacific Bank has never employed loan brokers, CD brokers or other agents in the State of Florida. California Pacific Bank has never owned assets located in the State of Florida. No employee of California Pacific Bank has ever traveled to Florida on business.
- 5. California Pacific Bank does advertised Certificate of Deposit rates in the San Francisco Bay Area. A third party company not connected to California Pacific Bank in any way called National CD Rate Line (and perhaps other similar companies unknown to California Pacific Bank) picks up the rates offered by financial institutions in local advertising or by calling for rates and publishes those rates on its website (www.cdrateline.com). Attached hereto marked Exhibit "A" is a true and correct copy of a web page from National CD Rate Line showing a demonstration of how an investor may check with National CD Rate Line to find the best Certification of Deposit rates being offer nationwide. California Pacific Bank apparently has received CD deposits from individuals and companies located outside of California who have used National CD Rate Line or other similar companies to find the CD rates offered by California Pacific Bank.
- 6. California Pacific Bank is the beneficiary of that certain irrevocable standby letter of credit in the amount of \$412,080.00 issued by Bank of America from its Scranton, Pennsylvania office dated March 30, 2007 (the "Letter of Credit") and amended on April 9, 2007 (the "Amendment"). A true and correct copy of the Letter of Credit is attached hereto marked Exhibit "B" and a true and correct copy of the Amendment is attached hereto marked Exhibit "C". On May 29, 2007, California Pacific Bank drew on the said Letter of Credit by Swift transmission to Bank of America pursuant to the language in the Letter of Credit that "reimbursement claims made by authenticated Swift are acceptable in which case draft and signed statements are not required." Letter of Credit, Page 1. A true and correct copy of the authenticated Swift transmission is

attached hereto marked Exhibit "D". On June 1, 2007, Bank of America rejected the draw under the Letter of Credit citing as the reason "[b]eneficiary's statement not presented per letter of credit terms and conditions". A true and correct copy of this Swift transmission from Bank of America is attached hereto marked Exhibit "E". Although no beneficiary's statement was required if the draw on the Letter of Credit was made by Swift transmission, California Pacific Bank resent its draw by Swift transmission on June 1, 2007 with a beneficiary's statement included. A true and correct copy of this Swift transmission from California Pacific Bank is attached hereto marked Exhibit "F". On June 4, 2007, Bank of America once again rejected the draw but this time on the ground that Bank of America had been temporarily restrained from honoring California Pacific Bank's draw because of an action in Pinellas County, Florida. A true and correct copy of this Swift transmission from Bank of America is attached hereto marked Exhibit "G".

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed at San Francisco, California on August 31, 2007.

National CD Rate Line - Rate Screen 631-738-1501 Home **Demonstration Mode** This screen is for demonstration purposes only. Bank names and rates are fictitious. To access current offerings please call 1-800-246-0005. Login ALL RATES ARE SUBJECT TO CHANGE WITHOUT NOTICE - PLEASE **About Us** CALL EARLY Institution names highlighed in red, mean you have an active investment with Demo this institution. Click on any term heading to view rates for that term. The default term is 1 FAQ Click on the institution name to view information about that institution. What's All Rates offered are Annual Percentage Rate (APR) not Annual Percentage New . Yield (APY). Related Links Due Diligence Contact Us # Name SPECIAL 30 60 90 180 270 1 18 2 30 3 **SAS 70** 5.75 5.75 5.95 5.75 5.75 **5.95** 5.45 5.55 0.00 5.55 5.70 5.55 Kingsbay St Bk, IA Bromley B&T Co., 5.50 5.70 5.80 5.90 5.90 **5.90** 5.50 5.50 0.00 5.60 5.60 5.60 3 Hartford St Bk, ME 6.00 6 yr 5.60 5.60 5.75 5.75 5.80 **5.85** 5.95 5.40 0.00 5.55 0.00 5.55 Bank Of 5.55 7 yr 5.00 5.10 5.20 5.30 5.50 **5.70** 5.70 5.80 5.85 5.85 5.85 5.35 Woodstock, IA 5.55 27 5 Capital Bk NA, MS 5.40 5.70 5.70 5.40 5.40 **5.70** 5.70 5.70 0.00 5.95 5.95 5.95 Citizens Bk, OR 5.10 5.10 5.10 5.10 5.20 **5.70** 5.95 5.95 0.00 5.95 0.00 5.95 Bank Of Cromley, 5.55 390 5.00 5.00 5.00 5.50 5.50 **5.50** 5.60 5.70 5.80 4.90 5.00 5.25 DE dγ Commercial Manhattan Bk NA, 5.10 5.10 5.10 5.10 5.10 **5.50** 5.50 5.50 0.00 5.50 5.50 5.50 NY **Cross County Line** 3.57 4.15 4.40 4.40 4.50 **5.50** 5.50 5.50 5.50 5.50 5.50 5.50 Bk, AR 10 Jasper Bkg Co, LA 5.50 5.60 5.90 5.90 5.00 **5.42** 5.43 5.50 0.00 5.55 0.00 5.62 Commercial One 5.00 5.00 5.00 5.50 5.50 **5.35** 5.45 5.55 5.65 5.65 5.65 5.75 Nb. FL 12 Bank Of Cabbit. 5.00 5 5.45 5.55 5.99 5.99 5.99 **5.27** 5.28 5.29 0.00 5.45 5.55 5.65 MĎ mo 13 Danver Svgs Bk, IL 4.80 4.80 4.90 4.90 4.90 **5.00** 5.00 5.00 5.00 5.00 5.00 5.00 Farmers & 14 Merchants St Bk, $0.00\,0.00\,0.00\,4.95\,4.95\,4.99\,0.00\,0.00\,0.00\,0.00\,5.00\,5.00$ TX 15 Keybank NA, NH 16 First Nb In

4.85 4.88 4.85 4.90 4.90 **4.95** 4.99 4.99 0.00 4.99 4.99 4.99

Bank of America 🧼

BANK OF AMERICA - CONFIDENTIAL

PAGE: 1

DATE: MARCH 30, 2007

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: 68017913

ADVISING BANK
CALIFORNIA PACIFIC BANK
601 MONTGOMERY ST.
SAN FRANCISCO, CA 94111-2603

BENEFICIARY
CALIFORNIA PACIFIC BANK
250 MONTGOMERY STREET
SUITE 500
SAN FRANCISCO, CA 94104

ISSUING BANK
BANK OF AMERICA, N.A.
1 FLEET WAY
PA6-580-02-30
SCRANTON, PA 18507-1999

AFPLICANT BULLARD ELECTRONICS LLC 2325 ULMERTON RD. SUITE 20 CLEARWATER, FL 33762

AMOUNT
NOT EXCEEDING USD 412,080.00
NOT EXCEEDING FOUR HUNDRED
TWELVE THOUSAND EIGHTY AND
00/100'S US DOLLARS

EXPIRATION JUNE 29, 2007 AT OUR COUNTERS

WE HEREBY OPEN OUR IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER 68017913 IN YOUR FAVOR.

CREDIT AVAILABLE WITH BANK OF AMERICA, N.A. BY PAYMENT OF BENEFICIARY'S DRAFT(S) AT SIGHT DRAWN ON BANK OF AMERICA, N.A.

DRAFTS MUST BE ACCOMPANIED BY:

Q3 - 13372 11 2. . .

- 1. THE ORIGINAL LETTER OF CREDIT AND ALL AMENDMENTS, IF ANY.
- 2. YOUR STATEMENT PURPORTEDLY SIGNED BY AN AUTHORIZED OFFICER STATING THAT "WE HEREBY CLAIM USD UNDER YOUR STANDBY LETTER OF CREDIT NO. 68017913 DUE TO QIBEE FAILURE TO PAY INDEBTNESS."

REIMBURSEMENT CLAIMS MADE BY AUTHENTICATED SWIFT ARE ACCEPTABLE IN WHICH CASE DRAFT AND SIGNED STATEMENTS ARE NOT REQUIRED.

IT IS A FURTHER CONDITION OF THIS STANDBY LETTER OF CREDIT THAT IT IS NOT OPERATIVE UNTIL QIBEE, INC. HAS ISSUED TO NBG, LLC, THEIR IRREVOCABLE LETTER OF CREDIT IN THE AMOUNT OF \$8,225,280.00 USD AND A PURCHASE ORDER IN THE AMOUNT OF \$8,225,280.00 USD. BUILLARD

COPY

Characteristics





BANK OF AMERICA - CONFIDENTIAL

PAGE: 2

THIS IS AN INTEGRAL PART OF LETTER OF CREDIT NUMBER: 68017913

ELECTRONICS OR QIBEE, INC. MUST NOTIFY BANK OF AMERICA, N.A. BY WRITTEN NOTICE ON THEIR LETTERHEAD AND REFERENCING THIS LETTER OF CREDIT NO. 68017913, THAT SUCH IRREVOCABLE LETTER OF CREDIT HAS BEEN ISSUED AND A COPY OF THE PURCHASE ORDER AND LETTER OF CREDIT HAS BEEN SENT TO BANK OF AMERICA, N.A., WE WILL THEN ISSUE OUR FORMAL AMENDMENT MAKING THIS LETTER OF CREDIT OPERATIVE.

PARTIAL DRAWINGS: ARE ALLOWED

ALL BANKING CHARGES IN CONNECTION WITH THIS LETTER OF CREDIT ARE FOR THE ACCOUNT OF THE APPLICANT.

DRAFT(S) MUST STATE "DRAWN UNDER BANK OF AMERICA, N.A., STANDBY LETTER OF CREDIT NUMBER 68017913 DATED MARCH 30, 2007."

DRAFT(S) AND DOCUMENTS SHALL BE PRESENTED AT OUR OFFICES AT BANK OF AMERICA, N.A., ONE FLEET WAY, SCRANTON, PA 18507 ATTN: GLOBAL TRADE OPERATIONS, STANDBY UNIT.

WE HEREBY ENGAGE WITH YOU THAT DRAFTS DRAWN IN CONFORMITY WITH THE TERMS OF THIS CREDIT WILL BE DULY HONORED ON PRESENTATION.

COMMUNICATIONS WITH RESPECT TO THIS LETTER OF CREDIT SHALL BE IN WRITING AND SHALL BE ADDRESSED TO US AT, ONE FLEET WAY, SCRANTON, PA 18507, ATTN: GLOBAL TRADE OPERATIONS - STANDBY UNIT, PHONE: 1-800-370-7519, SPECIFICALLY REFERRING TO THE NUMBER OF THIS LETTER OF CREDIT.

EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, THIS CREDIT IS ISSUED SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (1993 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 500.

IF YOU REQUIRE ANY ASSISTANCE OR HAVE ANY QUESTIONS REGARDING THIS TRANSACTION, PLEASE CALL 800-370-7519

SENT VIA SWIFT 700

AUTHORIZED SIGNATURE
THIS DOCUMENT CONSISTS OF 2 PAGE(S).

COPY

Bank of America

SWIFT707 - AMENDMENT TO A DOCUMENTARY CREDIT

:TO : RECEIVING PARTY NAME AND ADDRESS

CASF

: NYSW

: 5

: NOA

: 000000000000.00

: CALIFORNIA PACIFIC BANK

: 601 MONTGOMERY ST.

: SAN FRANCISCO, CA 94111-2603

:20 : SENDER'S REFERENCE

68017913

:21 : RECEIVER'S REFERENCE

: NONREF

:31C: DATE OF ISSUE

: 070330

:30 : DATE OF AMENDMENT

: 070409

:26E: NUMBER OF AMENDMENT

: 01

:59 : BENEFICIARY (BEFORE THIS AMENDMENT)

: CALIFORNIA PACIFIC BANK

: 250 MONTGOMERY STREET

: SUITE 500

: SAN FRANCISCO, CA 94104

:79 : NARRATIVE

: PLEASE DELETE THE FOLLOWING CLAUSE:

IT IS A FURTHER CONDITION OF THIS STANDBY LETTER OF CREDIT THAT IT IS NOT OPERATIVE UNTIL QIBEE, INC. HAS ISSUED TO NBG, LLC, THEIR IRREVOCABLE : LETTER OF CREDIT IN THE AMOUNT OF +8,225,280.00 : USD AND A PURCHASE ORDER IN THE AMOUNT OF : +8,225,280.00 USD. BULLARD ELECTRONICS OR QIBEE, INC. MUST NOTIFY BANK OF AMERICA, N.A. BY WRITTEN : NOTICE ON THEIR LETTERHEAD AND REFERENCING THIS LETTER OF CREDIT NO. 68017913, THAT SUCH : IRREVOCABLE LETTER OF CREDIT HAS BEEN ISSUED AND A : COPY OF THE PURCHASE ORDER AND LETTER OF CREDIT : HAS BEEN SENT TO BANK OF AMERICA, N.A., WE WILL : THEN ISSUE OUR FORMAL AMENDMENT MAKING THIS LETTER OF CREDIT OPERATIVE.

: THE APPLICANT HAS BEEN AMENDED TO:

: NBG, LLC

: 2325 ULMERTON RD.

: SUITE 20

: CLEARWATER FL 33762

DRAFT

EXHIBIT C



: : ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED. :72 : SENDER TO RECEIVER INFORMATION

DRAFT

CPB 00092

```
----- Instance Type and Transmission -----
Notification (Transmission) of Original sent to SWIFT (ACK)
Network Delivery Status : Network Ack
Priority/Delivery : Normal
Message Input Reference : 1511 070529CBNKUS6SAXXX5993037950
 ----- Message Header ------
Swift INPUT : FIN 742 Reimbursement Claim Sender : CBNKUS6SXXX
        CALIFORNIA PACIFIC BANK
        SAN FRANCISCO, CA US
         : BOFAUS6SXXX
Receiver
       BANK OF AMERICA, N.A.
         SAN FRANCISCO, CA US
        ----- Message Text -----
 20: Claiming Bank's Reference
     18251
 21: Documentary Credit Number
     68017913
31C: Date of Issue
     070330
52D: Issuing Bank - Name & Address
     BANK OF AMERICA, N.A.
     1 FLEET WAY
     PA6-580-02-30
     SCRANTON, PA 18507-1999
32B: Principal Amount Claimed
     Currency : USD (US DOLLAR)
     Amount
                                  #412,080.00#
34B: Total Amount Claimed
   Currency : USD (US DOLLAR)
Amount : #
                                    #412,080.00#
 72: Sender to Receiver Information
     ATTN: GLOBAL TRADE OPERATIONS
     STANDBY UNIT
     PLS REMIT TO OUR A/C 121038265 (ABA)
    WITH FRB S.F. QUOTING OUR REF
    ----- Message Trailer -----
 {MAC: 876CBC12}
{CHK:4FA7E0F4FC32}
        ----- Interventions ------
Category : Network Report
Creation Time : 29/05/07 15:10:59
Application : SWIFT Interface
 Operator
              : SYSTEM
570-330 4244 Evans (570) 330-4298 (570) 330-4298 (570) 330-4298 (570) 330-4298
 {1:F21CBNKUS6SAXXX5993037950}{4:{177:0705291511}{451:0}}
```

{DLM:}

.1

```
----- Instance Type and Transmission -----
 Original received from SWIFT
 Priority : Normal
 Message Output Reference : 1231 070 601CBNKUS6SAXXX6001117541
 Correspondent Input Reference : 1003 070601B0FAUS6SBXXX5396413839
----- Message Header -----
Swift OUTPUT : FIN 799 Free Format Message
Sender : BOFAUS6SXXX
        BANK OF AMERICA, N.A.
        SAN FRANCISCO, CA US
 Receiver : CBNKUS6SXXX
         CALIFORNIA PACIFIC BANK
        SAN FRANCISCO, CA US
 MUR: 0706010203056-01
----- Message Text ------
  20: Transaction Reference Number
      68017913
  21: Related Reference
      18251
  79: Narrative
      /30 VALUE DATE/070601
      /32 AMOUNT/
      NOA 0.00
      URGENT+ URGENT+ URGENT+
      RE: DRAWING UNDER LETTER OF CREDIT
      YOUR REFERENCE - 18251
      OUR REFERENCE - 68017913
      THIS IS BANK OF AMERICA'S NOTIFICATION
      TO YOU OF DISCREPANCIES, WHICH WE HAVE
      NOTED UNDER YOUR DRAWING REFERENCED ABOVE
      IN THE AMOUNT OF USD 412,080.00:
      1. BENEFICIARY'S STATEMENT NOT PRESENTED
         PER LETTER OF CREDIT TERMS AND
         CONDITIONS.
      WE ARE CONVEYING THESE DISCREPANCIES TO
      YOU IN ACCORDANCE WITH UCP500 OF THE
      INTERNATIONAL CHAMBER OF COMMERCE, WHICH
      GOVERNS AND CONTROLS DOCUMENTARY LETTERS
      OF CREDIT. DOCUMENTS REMAIN AT YOUR RISK
      AND DISPOSAL.
      REGARDS,
     SCRANTON STANDBY UNIT
      ----- Message Trailer
  {MAC:7B5A133F}
  {CHK:5F90E2EFBE9F}
```

EXHIBIT E

01/06/07-12:32:39 LocalSwiftAcks-5317-000001

```
----- Instance Type and Transmission ------
 Notification (Transmission) of Original sent to SWIFT (ACK)
 Network Delivery Status : Network Ack
 Priority/Delivery : Normal
 Message Input Reference : 1231 070601CBNKUS6SAXXX6001038010
----- Message Header ------
 Swift INPUT : FIN 799 Free Format Message Sender : CBNKUS6SXXX
         CALIFORNIA PACIFIC BANK
       SAN FRANCISCO, CA'US
 Receiver : BOFAUS6SXXX
        BANK OF AMERICA, N.A.
        SAN FRANCISCO, CA US
----- Message Text ------
  20: Transaction Reference Number
  21: Related Reference
      68017913
  79: Narrative
      ATTN: GLOBAL TRADE OPERATIONS
      STANDBY UNIT
      PER YOUR MR. MIKE EVANS TELEPHONE
      REQUEST THIS MORNING, JUNE 1, 2007,
      WE ISSUE THIS STATEMENT:
     WE HEREBY CLAIM USD412,080.00 UNDER YOUR
      STANDBY LETTER OF CREDIT NO.68017913 DUE TO
      QIBEE FAILURE TO PAY INDEBTNESS.
      PLS REMIT USD412,080.00 TO OUR A/C 121038265
      WITH FED RESERVE BANK, SAN FRANCISCO QUOTING
      OUR REF 18251
      REGDS,
   INTL DEPT
 ----- Message Trailer ------
  {MAC:7BD1F8B2}
  {CHK:5129264B4AE2}
  ------ Interventions -----
  Category : Network Report
  Creation Time: 01/06/07 12:32:17
  Application : SWIFT Interface
  Operator : SYSTEM
```

{1:F21CBNKUS6SAXXX6001038010}{4:{177:0706011231}{451:0}}

04/06/07-11:03:51

FileOutputMT-2938-000001

1

----- Instance Type and Transmission -------Original received from SWIFT

Priority : Normal

Message Output Reference : 1102 070604CBNKUS6SAXXX6003117565

Correspondent Input Reference : 1012 070604B0FAUS6SBXXX5399417654,

----- Message Header Swift OUTPUT : FIN 799 Free Format Message Sender : BOFAUS6SXXX

BANK OF AMERICA, N.A.

SAN FRANCISCO, CA US

Receiver : CBNKUS6SXXX

CALIFORNIA PACIFIC BANK

SAN FRANCISCO, CA US

MUR: 0706040175204-01

----- Message Text ------

20: Transaction Reference Number 68017913

21: Related Reference

18251

79: Narrative

/30 VALUE DATE/070604

/32 AMOUNT/

NOA 0.00

URGENT+ URGENT+ URGENT+

RE: DRAWING UNDER LETTER OF CREDIT

YOUR REFERENCE - 18251

OUR REFERENCE - 68017913

PLEASE BE ADVISED THAT WE HAVE BEEN

SERVED WITH A TEMPORARY RESTRAINING ORDER

RESTRICTING US TO HONOR YOUR CLAIM AT

THIS TIME. IN ADDITION, PLEASE NOTE THAT

CALIFORNIA PACIFIC BANK HAS ALSO BEEN

NAMED AS A DEFENDANT. THE ACTION WAS

ISSUED IN THE CIRCUIT COURT OF THE SIXTH

JUDICIAL CIRCUIT IN AND FOR PINELLAS

COUNTY, STATE OF FLORIDA, UCN REF:

07-5147-C1-13.

REGARDS,

SCRANTON STANDBY UNIT

----- Message Trailer -----

(MAC: D0EC5559)

{CHK: F645E15B2C38}

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA SAN FRANCISCO DIVISION

	\ PACIF	

Plaintiff

v.

CASE NO. C07-03330 JCS

BANK OF AMERICA, et al.,

Defendants.

I, MICHAEL WANG, declare as follows:

- 1. I have personal knowledge of the facts stated herein. If called to testify as a witness in this action, I could and would competently testify thereto.
- 2. I am the Internal Auditor of California Pacific Bank. Part of my duties as Internal Auditor is to maintain the computer records of California Pacific Bank.
- 3. All location information about "customers" of California Pacific Bank with "accounts" as such terms is defined in the Currency and Foreign Transactions Reporting Act, 31 USC Sections 5311-5330 and 12 USC Sections 1818(s), 1829(b) and 1951-1959 (commonly known as the Bank Secrecy Act) which includes loans, demand deposit accounts, savings accounts and/or certificates of deposit are kept electronically in a program named Banker II sold by Jack Henry & Associates to financial institutions. Upon opening any customer account, California Pacific Bank inputs the customer information into the Banker II program.
- 4. There are a total of 2270 opened and closed accounts in California Pacific Bank's Banker II program. Approximately eighty eight percent (88%) of the accounts are domestic

(USA) accounts and approximately twelve percent (12%) of the accounts are foreign accounts mostly Chinese national as California Pacific Bank serves the Chinese community. Of the domestic accounts, approximately 95% are account holders located in California. The remaining 5% non-California domestic accounts are unsolicited institutional Certificate of Deposit account from outside California.

- 5. On August 10, 2007, I was requested to search the California Pacific Bank data base in the Banker II program for California Pacific Bank in order to locate any account customer who listed an address in the State of Florida. The customer account records in the Banker II program can be searched by various criteria using the Text Import Wizard. One criterion is by the State the customer provides to California Pacific Bank as its address and I proceeded to search California Pacific Bank's customer account records for addresses in the State of Florida.
- 6. The result of my search was that there were no customers with loans, demand deposits or savings deposits located in the State of Florida. The location in the State of Florida that showed up in the computer data base was for a \$96,000 certificate of deposit opened on June 26, 2003 by Seminole Schools Federal Credit Union of Sanford, Florida. This is the only opened or closed account with an address in Florida. The said certificate of deposit has current account balance of \$106,638.07.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed at San Francisco, California on August 31, 2007.

Michael Wang

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA SAN FRANCISCO DIVISION

CA	TT	$\mathbf{F}\mathbf{O}$	DN	A TL	DΛ	CIF	\mathbf{C}	\mathbf{R}	NK.	
$\cup A$	ы	ГU	יואוי	NIA	ГА	CIL	ı	\mathbf{D}_{F}	MNN.	ı

Plaintiff

v.

CASE NO. C07-03330 JCS

BANK OF AMERICA, et al.,

Defendants.

DECLARATION OF MINH NGUYEN

I, MINH NGUYEN, declare as follows:

- 1. I have personal knowledge of the facts stated herein. If called to testify as a witness in this action, I could and would competently testify thereto.
 - 2. I am an employee of California Pacific Bank.
- 3. On June 23, 2003, I received by facsimile transmission a letter dated June 19, 2003 from Seminole Schools Federal Credit Union ("Seminole") requesting a Certificate of Deposit in the amount of \$96,000.00 at an annual interest rate of 2.25% for a two year term. A true and correct copy of said letter is attached hereto marked Exhibit "A". Upon receipt of the letter, I called the number on the letter and first left a message and eventually spoke with someone at Seminole. I told that person that California Pacific Bank was not offering an interest rate of 2.25%.
- 4. On June 24, 2003, I received by facsimile transmission a letter dated June 23, 2003 from Seminole requesting a Certificate of Deposit in the amount of \$96,000 at an annual interest

rate of 2.00% for a two year term. A true and correct copy of said letter is attached hereto marked Exhibit "B". Upon receipt of the letter, I called the number on the letter and spoke with a Mr. Weibert and told him the best rate California Pacific Bank could offer was 1.75% for the Certificate of Deposit requested. Mr. Weibert approved the rate of 1.75%.

- On June 26, 2003, California Pacific Bank received a wire transfer of \$96,000.00 from Seminole and opened a two year Certificate of Deposit in said amount at 1.75% per annum (the "Seminole CD").
- 6. No periodic statements regarding the Seminole CD were sent to Seminole except for the following which were mailed to the address on file for Seminole:
 - A notice of maturity of the Seminole CD sent in June 2005: (a)
 - A notice of maturity of the Seminole CD sent in June 2007; and (b)
 - (c) IRS Form 1099's for the interest credited to the Seminole CD at its initial maturity in June 2005 and its renewal maturity in June 2007.
- 7. The notice of maturity for any California Pacific Bank Certificate of Deposit states the present maturity date of the Certificate of Deposit and states that if the depositor does not elect otherwise, the Certificate of Deposit will renew for the same term at the then interest rate being offered by California Pacific Bank. Seminole did not contact California Pacific Bank at the time of the initial maturity of the Seminole CD and California Pacific Bank automatically renewed the Seminole CD for a new two year term.
- . 8. In June 2007 at the time the notice of maturity of the renewed Seminole CD was sent to Seminole, Seminole called California Pacific Bank inquiring about interest rates on Certificates of Deposit for other maturity terms and requesting that the Seminole CD be renewal for only a six month term instead of a two year term. Other that this single contact, Seminole never contacted California Pacific Bank after opening the Seminole CD.
- No interest credited to the Seminole CD has ever been withdrawn by Seminole and the current balance is \$106,638.07.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed at San Francisco, California on August 31, 2007.

Minh Nguyen

FROM : SCTFCU

PHONE NO. : 4073243102

Jun. 23 2003 11:58AM P1



2450 SOLITH LAUREL AVENUE SANFORD FLORIDA 32771

WWW.SEMINOLEFCU.ORG

TELEPHONE 407-322-4305 FAX 407-324-3102

June 19, 2003

California Pacific Bank

CA

Attn: Minh

REF: Purchase New Cartificate of Deposit

TaxPover # 59-0833576

Please open a carificate of deposit in the name of Saminole Schools Federal Craft Union for \$96,000.00. Your quoted annual interest rate is 2.25% using a 365-day basis for a 2 year term.

We understand that Dividends will be paid at maturity. Please safetyce this instrument at your institution and mail us a receipt along with other account documentation including permanent signature cards.

Only one signature is required and the following are temporary authorized signers for this account:

Brerida J. Miller, Prekident

Patricia Richards, Vice President of Operations

Please provide us with wiring information to complete the transaction. If additional information is needed, piease call (407) 322-4305 extension 123,

Sincerely

Jim Meikert

PAGE 86/13

with Amesident of Finance

6/23/03 earl & lane 9:35 message 9:45 Jim will final VANCIAL WELLBEING Out about inv

QUALITY - INTEGRITY - FINANCIAL WELL-BEING

Cannot opel
Prote Manca Gilot 102/11/80 CAL PACIFIC BANK

EXHIBIT A

: SCTFCU PHONE NO. : 4073243102

Jun. 24 2003 11:05AM P1



2450 SOUTH LAUREL AVENUE SANFORD, FLORIDA 32771

WWW.SEMINOLEFCU.ORG

TELEPHONE 407-322-4305 FAX 407-324-3102

June 23, 2003

California Paulife Bank CA

Attn: Minh

REF:

Purchase New Certificals of Deposit

TexPeyer # 59-0839576

Please open a certificate of deposit in the name of Seminole Schools Faderal Credit Union for \$96,000.00. Your quoted annual interest rate is 2.00% using a \$65-day basis for a 2 year term.

We understand that Dividends will be paid at maturity. Please safeteep this instrument at your institution and mail us a receipt along with other account documentation including permanent algorithms cards.

Only one signature is required and the following are temporary authorized alguers for this account:

Brenda J. Miler, President

Patricia Richards Vice President of Operations

Please provide us with writing information to complete the transaction. If additional information is needed, please out (407) 322-4305 ordersion 123.

Sincerely,

An Weibert

Vice President of Phance

6/20/03 9:30 telle to bu weibert ok for

Rate 1.75%

QUALITY . INTEGRITY . FINANCIAL WELL-BEING

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61:b1 Z00Z/Z1/80

EXHIBIT B